

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

TIME WARNER TELECOM OF HAWAII,
L.P., dba OCEANIC COMMUNICATIONS

To Declare or Reclassify Services as
Partially Competitive

DOCKET NO. 04-0082

PROTECTIVE ORDER NO. 21080

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

RECEIVED
2004 JUN 24 P 4:12
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed

June 24, 2004
At 8 o'clock A.m.

Karon Higashi

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	
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TIME WARNER TELECOM OF HAWAII,)	DOCKET NO. 04-0082
L.P., dba OCEANIC COMMUNICATIONS)	
)	
To Declare or Reclassify Services as)	
Partially Competitive)	
_____)	

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("TWTC") has filed a Petition for a declaratory order that certain business services provided by the Petitioner are inherently partially competitive or, in the alternative, for approval of the reclassification of certain business services provided by Petitioner as partially competitive (the "Petition");

WHEREAS, TWTC maintains that disclosure of certain confidential, proprietary, and/or highly competitively sensitive information could cause competitive harm to TWTC;

WHEREAS, TWTC anticipates that during the course of this proceeding, information considered to be privileged or confidential by a party may be requested or filed;

WHEREAS, TWTC and the Division of Consumer Advocacy ("Consumer Advocate") are parties to this proceeding;

WHEREAS, the Consumer Advocate and TWTC (collectively, the "Parties", and

individually, a "Party") desire to establish a set of procedures and provisions pertaining to the use and/or disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be held in camera;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket.
2. The Consumer Advocate and TWTC shall be subject to this protective order and shall be entitled to all confidential information of a Party under the provisions of this protective order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order constitute "government records," as defined in Hawaii Revised Statutes ("HRS") §92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall

apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A Party may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, customer, and/or other information, including, but not limited to cost support studies. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a Party designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall submit the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a Party seeks to designate information as confidential, the Party must: (1) identify, in reasonable detail, the information's source, character, and location; (2) state clearly the basis for the claim of confidentiality; and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the

information is confidential and whether it should be disclosed under a protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or to a Party, orally or in any other form, shall be protected as fully as confidential information provided in written form. A Party shall notify the Commission and the other Party when information provided orally or in other than written form includes confidential information. At the time of such notification, the Party shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to TWTC from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information which a Party claims to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any Party claiming that information is confidential shall place upon the applicable material the following legend:

CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document or other material is deemed to contain confidential information, the Party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the Party claiming the information is confidential, other persons shall, to the extent requested by that Party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Either Party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the Party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing Party from any misuse or unpermitted disclosure of the information. In addition, the Party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person", as used in this protective order means any one of the

following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission and its staff;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate;
- d. TWTC, its officers and employees, its counsel (including employees directly employed by such counsel) and any consultants retained by TWTC;
- e. Any other person approved by TWTC; and
- f. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with this proceeding and any related Commission administrative and judicial proceedings to which TWTC is a party (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff in any proceeding pending before the Commission involving TWTC, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be

used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving TWTC, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a Party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such confidential information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order No._____.**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER NO. _____ AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a Party or person has obtained under this protective order, that Party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until the Parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The Parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

26. The Parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may modify this protective order on the motion of any Party, or on its own motion, upon reasonable notice to the Parties and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within such time deemed reasonable per agreement between the parties, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

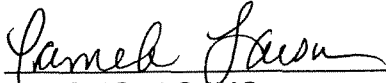
29. Counsel and the representatives of record for a Party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statute.

SANCTIONS

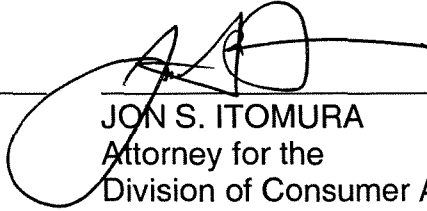
31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

DATED: Honolulu, Hawaii June 14, 2004.



J. DOUGLAS ING
PAMELA J. LARSON
Attorneys for

Time Warner Telecom of Hawaii, L.P.



JON S. ITOMURA


Attorney for the

Division of Consumer Advocacy

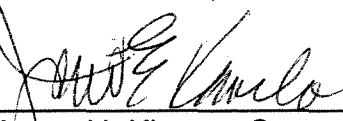
Department of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS 24th day of June, 2004
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:



Michael Azama
Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Hawai'i Public Utilities Commission on the _____ day of _____, 2004 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. 04-0082 and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to TWTC and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 2004.

Signature

Address

(_____) _____
Telephone Number

CERTIFICATE OF SERVICE

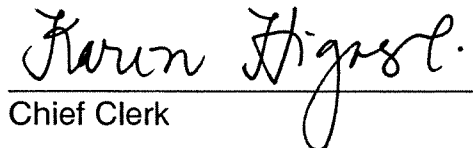
I hereby certify that I have this date served a copy of the foregoing Protective Order No. 21080, upon the following party (parties) by hand delivery or by mail, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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Honolulu, Hawaii 96813

Dated: June 24, 2004



Chief Clerk